

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

* Case No. 16-MJ-1000 (PK)

*

* Brooklyn, New York
* November 17, 2016

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v.

*

DAN ZHONG,

*

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Defendant.

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* * * * *

TRANSCRIPT OF CRIMINAL CAUSE FOR DETENTION HEARING
BEFORE THE HONORABLE RAMON E. REYES, JR.
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

ALEXANDER A. SOLOMON, ESQ.

DOUGLAS PRAVDA, ESQ.

Asst. United States Attorney
United States Attorney's Office
271 Cadman Plaza
Brooklyn, NY 11201

For the Defendant:

THOMAS FITZPATRICK, ESQ.

500 Fifth Avenue

33rd Floor

New York, NY 10110

Certified Interpreter:

MR. JOHN LIU

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Shelton, Connecticut 06484 (203)929-9992

1 (Proceedings commenced at 12:29 a.m.)

2 THE CLERK: Criminal cause for detention hearing,
3 case no. 16-1000M. United States vs. Dan Zhong. Counsel,
4 please your name for the record.

5 MR. SOLOMON: Alex Solomon for the government.

6 Good afternoon, Your Honor.

7 MR. FITZPATRICK: Good afternoon, Your Honor.

8 Thomas Fitzpatrick for the defendant, Mr. Zhong.

9 THE COURT: Good afternoon.

10 THE CLERK: Also present is Mandarin interpreter,
11 John Lu, previously sworn.

12 THE COURT: I have to admit that I have not had the
13 full opportunity to read the letters of -- I think they were
14 today or yesterday. I was just made aware of them at like 11
15 o'clock when I was coming to the hearing that you saw before.

16 So I skimmed as much as I could. I did read the
17 transcript of the hearing in front of Judge Lindsay and the
18 government's initial letter -- was it -- November 12th.

19 So I have some understanding of what's going on
20 here, but Mr. Fitzpatrick, do you have a package to present?

21 MR. FITZPATRICK: Your Honor, we delivered a -- I
22 had a letter delivered to you today which includes a bail --
23 a memorandum or a bail package and background information on
24 the private security firm that we would like to monitor Mr. -
25 - confine Mr. Zhong to his home. And it was delivered later

1 than it should have been, Your Honor. We expected it to be
2 delivered at 8:30. I understand it didn't get here until
3 about 10:30. That I apologize, but I would --

4 THE COURT: Yes, but it also takes time to work its
5 way up from the mail room, so --

6 MR. FITZPATRICK: Your Honor, I would, if possible
7 --

8 THE COURT: Mr. Richardson emailed it to me at
9 11:00 and so I have it here on my computer. I'm going to
10 pull it up. All right.

11 So --

12 MR. FITZPATRICK: Your Honor, I would ask, if
13 possible, that we have a brief adjournment so that you could
14 fully read all of this material.

15 THE COURT: I don't think we need to adjourn. Home
16 confinement, a million dollar bond secured by his home in
17 Livingston, New Jersey, which has 500,000 in equity.

18 Pretrial Services supervision -- this is what
19 you're proposing, not necessarily what I'm agreeing to. I'm
20 just reading a letter. Electronic monitoring, private
21 security firm to monitor the home 24/7. That's the package?

22 MR. FITZPATRICK: It is, Your Honor, but this is
23 not just any security firm. This is not some storefront
24 security operation.

25 And if I may, I'd like to have the opportunity to

1 describe this company a little more.

2 THE COURT: Go ahead.

3 MR. FITZPATRICK: Your Honor, may I also indulge
4 you. Mr. Zhong is the president and owner U.S. Rilin
5 Corporation, one of the major focuses of this complaint.

6 He is -- his company has been represented by a firm
7 for at least the last year. They know far more about it than
8 I do. I've worked closely with them.

9 Would you mind if Ms. Fleming, a former AUSA in
10 Newark, and counsel for U.S. Rilin, comes up here in case I
11 have to confer with her?

12 MR. SOLOMON: Your Honor, I don't think we have a
13 problem with whom Mr. Patrick -- Mr. Fitzpatrick chooses to
14 confer. I think we do have an issue if Ms. Fleming is, in
15 fact, representing this defendant, because I do think there
16 would be a clear conflict of interest.

17 MR. FITZPATRICK: Your Honor, I'm not saying she's
18 representing him in his individual capacity, but the other
19 day before Judge Lindsay I had to ask for a brief adjournment
20 to go back there and talk to her. It just makes it a little
21 easier. That's all I'm asking. She's not entering an
22 appearance on his behalf.

23 THE COURT: Why don't you try to do it flying solo
24 and then if we need Ms. Fleming's help, we'll reach out to
25 her.

1 MR. FITZPATRICK: Fair enough, Your Honor.

2 THE COURT: So tell me about this firm, this
3 security firm.

4 MR. FITZPATRICK: Guidepost Security, Your Honor,
5 is a global company that is run by a group of distinguished
6 former federal prosecutors.

16 THE COURT: I know him.

17 MR. FITZPATRICK: A former chief of the criminal
18 division, as I was many years before him.

25 They have provided this type of security several

1 times before. They have been monitors on numerous occasions.

2 As I said, it's a global security company with a myriad of
3 former federal agents who work for them.

4 If they are given this assignment, they have been
5 out to the house, they've inspected it, they know what is
6 needed. They will install alarms, sensors, monitors.

7 They will have two guards outside the house, front
8 and back, 24/7 in 12 hour shifts. They will give the names
9 of those security officers to the government. Nobody will be
10 allowed into the residence unless that visitor is pre-
11 approved by the court.

12 And anybody visiting has to surrender his or her
13 cell phone, will be searched and cannot enter the house with
14 more than \$200 in cash. Mr. Zhong and his family will not be
15 allowed to have unauthorized electronic devices.

16 Your Honor, this is a very elaborate and expensive
17 operation, but it's that important to them to get Mr. Zhong
18 released from custody.

19 The very least of our problems is that he speaks
20 Mandarin. He speaks no English. It's going to be very
21 difficult for me to communicate with him and prepare his
22 defense, not to mention how difficult it is for him to live
23 at MDC. He can't talk to anybody at MDC.

24 Your Honor, I submit that this company, Guidepost,
25 can do such -- such an adequate job that there is absolutely

1 no concern about his escaping.

2 Were he to find a way to do it, Your Honor, this
3 company's reputation would be ruined and they'd probably be
4 out of business.

5 THE COURT: Oh, come on.

6 MR. FITZPATRICK: This is the most --

7 THE COURT: Come on. That's overstating it.

8 MR. FITZPATRICK: Oh, really, Your Honor. If he
9 were to --

10 THE COURT: This prestigious group of former U.S.
11 Assistant U.S. Attorneys will be out of business.

12 MR. FITZPATRICK: Your Honor, if they --

13 THE COURT: I doubt it.

14 MR. FITZPATRICK: If he managed to escape from that
15 house, Your Honor, because it's impossible for him to do it.
16 Impossible.

17 THE COURT: What Mr. Richardson sent me does not
18 have the Guidepost proposal.

19 MR. FITZPATRICK: It doesn't.

20 THE COURT: No, no. What he emailed to me, because
21 I haven't gotten the copy that you provided to the mail room
22 at 10:30.

23 MR. FITZPATRICK: I can hand it up to you.

24 THE COURT: All right. Let me see.

25 MR. FITZPATRICK: If it's going to be filed, I

1 asked that it be filed under seal.

2 (Pause.)

3 THE COURT: All right. What does this cost,
4 ballpark?

5 MR. FITZPATRICK: About \$144,000 a month, Your
6 Honor.

7 THE COURT: Okay. All right. So doesn't that go --
8 -- maybe I'm stealing your thunder, Mr. Solomon --

9 MR. SOLOMON: Go ahead, Your Honor. That's fine.

10 THE COURT: But doesn't that -- and I read
11 somewhere that Mr. Zhong's family is going to pay for this.

12 But doesn't that undercut his -- what I sense is
13 he's trying to portray this modest -- you know, he's a man of
14 modest -- relatively modest resources.

15 He's got family that can pay \$144,000 a month to
16 provide this security. They could surely provide for him if
17 he uproots himself and his family elsewhere and loses the
18 house. No big deal. That's less than -- that's what?
19 That's three months?

20 MR. SOLOMON: Yes, Your Honor.

21 THE COURT: Four months, maybe.

22 MR. SOLOMON: In terms of liquidity.

23 MR. FITZPATRICK: Your Honor, he is, in fact, a man
24 of relatively modest means. There's never been a dispute.
25 The government knows it. We've never disputed it. He has

1 relatives in China of substantial wealth. Correct.

2 Could one draw the inference that were he able to
3 escape and go back there they would presumptively support
4 him? One could draw that inference, yes. But he has to
5 escape, Your Honor.

6 This company is authorized to use all reasonable
7 force to stop him from escaping. There is no reasonable way
8 he could escape. There's just no way he could do it, Your
9 Honor. So the wealth of his family in China I submit is
10 totally irrelevant.

11 MR. SOLOMON: Your Honor, we do have concerns.

12 First of all, over this weekend Judge Lindsay did
13 indicate that she would be amenable theoretically to
14 releasing this defendant, should he be able to come up with a
15 proposal that called for a comprehensive system of home
16 confinement.

17 And we don't argue, necessarily, that that is what
18 Mr. Fitzpatrick is proposing.

19 However, we do have problems with the fact that
20 he's refusing, and has refused, to provide us information as
21 to who's actually paying these bills.

22 And this goes to the issue that Your Honor was
23 raising. This defendant, in fact, have access to vast
24 resources.

25 As we outline in our letter on page 4 --

1 THE COURT: Which letter? The first letter or --

2 MR. SOLOMON: This is the letter that we filed this
3 morning, Your Honor.

4 THE COURT: Oh, okay.

5 MR. SOLOMON: So just reading a few bullet points,
6 and this was the result -- this was the result of one or two
7 days of research, Your Honor.

8 So he's instructed a bank to transfer more than 3.5
9 million from a bank account of a limited liability company to
10 the bank account of an affiliated entity.

11 In September, 2015 alone he wired more than 6
12 million from the same bank account to Rilin in China. He's
13 cashed numerous checks from Rilin, totaling at least \$360,000
14 made out to cash, including \$100,000 in February of 2015.

15 He's written many numerous checks out from Rilin,
16 this Chinese entity with whom he purportedly has no
17 affiliation, out to cash, \$10,000 each. And writes rent
18 checks to the Chinese Consulate General.

19 Something Judge Lindsay was very concerned about
20 was the fact that should this defendant step into either the
21 Chinese Mission or the Chinese Consulate, there is nothing
22 that law enforcement can do about that, because those are
23 inviolate buildings that law enforcement from the United
24 States cannot enter.

25 And turning back to Judge Lindsay's directives, she

1 also was very concerned about encumbering and identifying --
2 identifying and encumbering assets that this defendant had.

3 And something that we're not satisfied at all with
4 is the identification of specific assets. In fact, Mr.
5 Pravda's going to outline now specific concerns that we have
6 about disclosures that were made to pretrial services.

7 MR. PRAVDA: Your Honor, in the Pretrial Services
8 report the defendant disclosed 150,000 in stocks, 70,000 in
9 savings retirement accounts and 100,000 (indiscernible) and
10 that totals is less than \$350,000.

11 And yet in Mr. Fitzpatrick's letter, he proposes to
12 put up approximately \$500,000, which he's represented is
13 coming from the defendant in a combination of cash and stocks
14 as part of a proposal to secure the defendant's release.

15 So the upshot here, Your Honor, is that the
16 defendant was not fully forthcoming in disclosing to Pretrial
17 Services what his assets are.

18 And he also reports \$50,000 a month in income,
19 which is obviously quite inconsistent with this modest
20 lifestyle which he is supposed to be leading, together with
21 the financial picture that's presented here, as one of
22 somebody who doesn't have the kind of means either to pay
23 \$144,000 a month for this private security, or to be able to
24 put up stocks and cash in an amount that would satisfy the
25 government's concerns.

1 So what Judge Lindsay instructed on Saturday was
2 that the defendant needed to identify all of those assets and
3 present a proposal by which his ability to access that money
4 would be restricted, such that the only access that he could
5 have would be for his personal living expenses.

6 And then he wouldn't be able to touch any of the
7 wealth that he or his family may control and that hasn't been
8 addressed at all.

9 THE COURT: He and his immediate family.

10 MR. SOLOMON: Correct.

11 THE COURT: I mean, that doesn't -- I hear what
12 you're saying, Mr. Pravda, but that doesn't answer the
13 question of -- that the larger family, the extended family
14 that's going to be paying for this \$140-whatever-thousand
15 dollars per month in security expenses.

16 There was something in one of the -- I think the
17 initial letter that the government wrote about a \$2 million
18 payment --

19 MR. PRAVDA: Yes, he wrote two checks, Your Honor,
20 totaling approximately \$2 million to put just three, four
21 apartments in the Time Warner Center in Manhattan.

22 THE COURT: And who are those apartments for?

23 MR. PRAVDA: Well, Your Honor, the government's
24 understanding is that no one is currently living in those
25 apartments.

1 THE COURT: And so he owns them is your
2 understanding?

3 MR. PRAVDA: I think that he --

4 THE COURT: You don't know.

5 MR. SOLOMON: Your Honor, to be clear, his family
6 and the company own these apartments through a series of
7 straw companies.

8 MR. PRAVDA: They're limited liability entities,
9 which he wrote those two checks for the part of the down
10 payment for the purchase of those apartments.

11 THE COURT: And the checks were drawn on --

12 MR. SOLOMON: On Rilin accounts.

13 THE COURT: Rilin accounts.

14 So your concern is he has access to Rilin's
15 capital.

16 MR. SOLOMON: He has access to tens of millions of
17 dollars in Rilin capital and we don't know how that would be
18 used.

19 MS. FLEMING: Your Honor, may I be heard on the
20 company's account, because we've taken steps on the company
21 accounts.

22 MR. PRAVDA: Those are assets that could be used,
23 for example, not only to aid in his flight -- not only to aid
24 in his flight, but also potentially to compensate any suretor
25 that might be required to put up money as part of a release

1 package.

2 As Your Honor noted, you know, given the
3 significant wealth this family has, you know, posting the
4 house, if he were to choose to uproot himself and go back to
5 China with his family, the value of the house is going to be
6 meaningless in terms of keeping him here, because that's
7 something he can afford to lose based on the value of the
8 assets that are accessible to him by virtue of his family's
9 significant wealth.

10 THE COURT: Why don't you come on up, Ms. Fleming.

11 MS. FLEMING: Thank you, Your Honor. Cathy Fleming
12 of Fleming Ruvoldt. I do represent U.S. Rilin, which has
13 been cooperating and produced many documents in response to
14 grand jury subpoenas.

15 The apartments in question are owned by a company -
16 - that owns them it is their family members. The company is
17 owned by his cousin and his aunt, who are over in China, and
18 they own those apartments.

19 What the company has done, and I have not had the
20 opportunity since he's been at the MDC to talk to him, but
21 what the company is putting in place and planning to do is
22 that while these charges are pending, Mr. Zhong will not be a
23 signatory on any account and he will not be actively running
24 the company.

25 He will be informed on what's going on, but we are

1 taking steps and we've already drafted trust instruments. I
2 was planning to speak with them.

3 It's been a busy week, but I was planning to speak
4 with them and work in with counsel who would be an
5 appropriate trustee to take over and would be acceptable.
6 He will not have access to any accounts that are on the Rilin
7 name.

8 When the package was being put together, we were
9 being asked -- the reason I believe that it's reflected
10 mechanics to be discussed, is because of the accounts.

11 It was figured out that we could figure out how to
12 do it and pledge them in such a way that the government would
13 be comfortable no one would have access to the personal
14 accounts that are there. And part of the problem simply was
15 in the time to figure out what was where.

16 But in terms of all company accounts, he is going
17 to be taken off as a signatory on any account. So he will not
18 have access to any of those funds.

19 In terms of who's going to pay, it hasn't been
20 worked out. They are in China. He has family members, many
21 of whom are very wealthy.

22 Whatever mechanic comforts the court in terms of
23 doing that, we can satisfy. There's a huge enterprise in
24 China called Rilin Enterprises. They own many industries in
25 China. There's a ship building business. There's a major

1 construction business.

2 There's a huge Swabian business that does --
3 Swabian factory that makes oil and does a byproduct for a
4 very large (indiscernible) products that are over there. It
5 is a very large -- they own a port across from North Korea,
6 interestingly enough. They have real estate throughout
7 China.

8 Whatever satisfies the court, I believe that in
9 terms of if the court wants the family to post security, I'm
10 sure the family would be willing to do that.

11 The feeling I believe was that because there is
12 wealth the private security was the way to assure the court -
13 - and I know Mr. Jaffe's here in court, and can to talk to
14 the court about how it works, but I believe the feeling was
15 that that would the most amount of security to the court.

16 But in terms of bank accounts and the rest of if,
17 Mr. Zhong is not going to have active control of it and the
18 company is not going to have him having any signatory
19 authority over it at all.

20 So I can represent that to the court and we are
21 going to work with the government and let them know who will
22 be taking over and a trust instrument that will be in place
23 with that.

24 MR. PRAVDA: Your Honor, I think that's something
25 that needs to happen before we should come back here and

1 discuss the potential of the defendant's release on bail.

2 Just to put in -- maybe just to crystalize a little
3 bit why the government's so concerned about the source of the
4 money and the defendant's refusal to acknowledge it is that
5 the defendant's uncle, (indiscernible) Wong, is the principal
6 of the construction business that referenced in the
7 complaint.

8 He is the one who has these vast sums of wealth. He
9 is also connected obliquely to the security firm that the
10 defendant is proposing to use in that the husband of the CEO
11 is (indiscernible) Wong's attorney.

12 He has represented to the United States Attorney's
13 Office that he represents the defendant's uncle and so that
14 presents a significant concern for us as to who's actually
15 going to be controlling the security company.

16 That's why we repeatedly asked Mr. Fitzpatrick who
17 was putting up the money to pay for the security company. In
18 fact, Mr. Fitzpatrick refused to tell us. That was a
19 significant concern for us because we feel like we're not
20 really getting full visibility.

21 THE COURT: Is this --

22 MR. PRAVDA: I'm sorry?

23 THE COURT: Is this a bailable case?

24 MR. PRAVDA: Your Honor, I think in the
25 government's view there is no combination of conditions that

1 would permit the defendant's release on bond.

2 MR. SOLOMON: I think one thing to keep in mind,
3 Your Honor, is you know, first of all, these are extremely
4 serious charges.

5 The defendant's facing a significant period of
6 incarceration. We're talking about forced labor, the use of
7 forced labor to do construction work -- you know, contracting
8 work competing against U.S. workers here in the U.S. This is
9 a very serious set of charges.

10 And if we look at the co-defendant, who was given
11 the opportunity to stay and address the charges or flee to
12 China, he chose to flee.

13 We believe that Mr. -- the defendant in this case
14 would do exactly the same thing.

15 MS. FLEMING: Your Honor, I can address that as
16 well, because we've been working on the case.

17 And what the government hasn't told the court, and
18 a lot of it's under seal, but there is active litigation
19 that's currently pending in the Second Circuit relating to
20 the issue of whether the Chinese workers -- and Mr. Dan is
21 not a Chinese worker.

22 He was when he initially came over. He got
23 permanent status here. He doesn't work at China Rilin. He
24 doesn't have an office in the China Mission. He works at U.S.
25 Rilin. Regardless of whether the families have related

1 businesses, he is not in the same position.

2 The Chinese workers that live in the mission and
3 live in homes that work in the mission and those other
4 places, including the co-defendant, come in and they have
5 diplomatic visas, A2 and G2 visas. They have asserted
6 immunity.

7 There have been communications between the State
8 Department and China as to whether they -- China has asserted
9 immunity. The State Department may have (indiscernible). We
10 are actively litigating in on behalf of some of the workers.

11 The workers have independent counsel, Marjorie
12 Pierce. She came into court today because they arrested one
13 of them at the airport leaving yesterday.

14 On November 9th, the State Department delivered
15 letters to the -- to China saying that Landong, the co-
16 defendant and the other worker's status changed.

17 Landong as of -- I think he had a day's notice and
18 the other workers as of tomorrow. They are in a completely
19 different position.

20 So they were told that their status would change as
21 of the end of this week and that the United States would no
22 longer given them the ability to assert immunity.

23 It's a completely different situation here and it's
24 really unfair to suggest that because Landong did this and
25 met with them. I understand they pitched him on staying. He

1 declined to do so. It's very different and it's really unfair
2 to say apples and oranges. It's completely different.

3 MR. SOLOMON: Again, with all due respect, we
4 question whether Ms. Fleming is representing the company, or
5 the company and the defendant in this case. That is a
6 serious concern here.

7 MS. FLEMING: I'm an officer of the court. And I
8 think the facts should be out before the court.

9 He is the owner of the company I represent. We are
10 taking the steps to do what we need to do with this company,
11 and I think that we are taking the responsible steps.

12 This is the gentleman who has instructed the
13 company to comply with all the subpoenas as recently as a
14 week ago, when they asked us to comply with a subpoena over a
15 weekend and we did.

16 I think it's fair for me as an officer of the court
17 to stand here and correct facts.

18 THE COURT: Mr. Zhong has how many children? Two
19 adult children?

20 MR. PRAVDA: He has three children.

21 MS. FLEMING: He has three, Your Honor.

22 MR. PRAVDA: Three children. Two adult children
23 and one living in the house with him.

24 MS. FLEMING: There's an eight year old daughter,
25 who's an American citizen born here, and he has two older

1 children. One attends NJIT and one is in NYU Dental School.
2 His daughter at dental school I believe is an American
3 citizen. His eight year old's an American citizen. I believe
4 his stepson, I think it is, is a green card holder, as is he
5 and his wife.

6 MR. PRAVDA: Again, Your Honor, Ms. Fleming did not
7 represent this defendant, so we object to her arguing on
8 behalf of this defendant at the bail hearing.

9 She represents the company. She has told this
10 court just now that U.S. Rilin and China Rilin entirely
11 separately businesses.

12 That's contradicted by significant documentary
13 evidence that the government has obtained, including the fact
14 that Mr. Zhong, who according to them, is the principal of
15 U.S. Rilin, is writing all of the these checks on the
16 accounts of China Rilin.

17 MS. FLEMING: I think we'll fight about that at
18 another time, Your Honor, but we've provided the
19 documentation from New York State showing U.S. Rilin as a New
20 York corporation.

21 We'll argue later as to whether they think they've
22 pierced a corporate veil or whether they're related companies
23 or affiliates. But they are separate corporations.

24 MR. PRAVDA: And they are operating together
25 through numerous shell companies, numerous limited liability

1 companies.

2 THE COURT: So --

3 MR. PRAVDA: Money is flowing through the bank
4 accounts to all of these companies.

5 MR. SOLOMON: I think turning back to your initial
6 question, Your Honor --

7 THE COURT: Is there anything -- yes. My initial
8 question is this a bailable case?

9 MR. SOLOMON: We don't think so, given the
10 seriousness of the charges, given the fact that the co-
11 defendant fled when given an opportunity to stay and fight
12 the charges.

13 Given the fact that all of these workers have been
14 fleeing the country the last several days, who are all
15 subject to grand jury subpoenas.

16 We have every concern that should this defendant be
17 given the opportunity, however narrow, to escape, he will.

18 And also we don't have any feeling of security that
19 we have a full handle on all the defendant's wealth and that
20 the defendant's wealth should be encumbered before he is
21 allowed to be released on bond.

22 MR. PRAVDA: And he doesn't have to flee the
23 country to escape, Your Honor. He could walk into the
24 Chinese Consulate or the Chinese Mission and the government
25 would have no ability to recapture him.

6 I also understand that he met with the prosecutors
7 with counsel and they offered him certain conditions by which
8 he could stay in this country or he could choose to go home
9 and he chose to go home and they knew it.

10 So I think it's a gross distortion of the record to
11 say he fled and these employees chose to leave. The
12 government knows everyone who's leaving. They go to the
13 airport to question them. These people did not flee. They
14 chose to go back to China. And that's a total distortion.

18 But they're claiming that if you let him out, he
19 walks into the Chinese Mission, that doesn't cost him
20 anything more than a PATH trip to get over here to do that.
21 But that's got nothing to do with his wealth. His wealth is
22 irrelevant if he can't get out of his house.

23 And this particular company is guaranteeing that
24 the can't escape from that house even if he were inclined to.

25 MS. FLEMING: Your Honor, it's probably also worth

1 pointing out that during the time of the this investigation,
2 while the company was producing records, Mr. Zhong went to
3 China and came back. Gave notice of his trips, dates when he
4 was going, dates when he was coming back to the government.
5 He was interviewed at the borders both ways.

6 He went. He came back. He chose -- it is a factor
7 that the court should know.

8 And this access to wealth, if the company takes
9 away his ability to have access of the company bank accounts,
10 any of them, any company bank accounts, I don't understand
11 how they think he's going to get access to his
12 (indiscernible).

13 MR. SOLOMON: Well, there is the matter, Your
14 Honor, that should any members of the diplomatic mission or
15 the consulate community -- consulate community from the PRC
16 decide to visit this defendant at his home in New Jersey,
17 there's nothing that a private security firm can do to
18 prevent them from entering that house.

19 MR. FITZPATRICK: There is, Your Honor, because you
20 have to okay it. Nobody gets access unless approved by the
21 court.

22 THE COURT: But they're entitled to immunity,
23 right?

24 MR. SOLOMON: Yes.

25 THE COURT: You're saying they can violate court

1 orders?

2 MR. SOLOMON: Yes.

3 MR. FITZPATRICK: They could what? Get into the
4 house?

5 MR. SOLOMON: Yes.

6 MS. FLEMING: He would violate his bail condition
7 if that happened and they would tell on him. They could call
8 the court. They could violate an order but he can't.

9 THE COURT: Look. This is interesting -- an
10 interesting dilemma.

11 I'm of the opinion, as I think Judge Lindsay was,
12 that this is a bailable case with the right conditions, the
13 right checks, but I don't -- I mean, I certainly don't see
14 them presented yet. And I don't know how they would be
15 presented.

16 There are very serious charges facing Mr. Zhong.
17 Resources that are his disposal, apparently, that can make
18 him -- that can help him flee.

19 Those resources are not in his name necessarily,
20 but he has access to them so you could, at least -- the
21 resources you know about, the bank accounts you know about,
22 put something in place that shows that he can't access them
23 certified by the companies. But you don't know what other
24 accounts there are out there. I don't know that the
25 government could ever, or the court could ever figure it out

1 for certain.

2 Part of a bail package is also to make it hurt, to
3 drive down the incentive the flee. I don't know I could come
4 up with any amount that would make it hurt here.

5 The relatives in China apparently have a lot of
6 money at their disposal. A \$10 million bond? They'd
7 probably laugh that off, right?

8 MR. SOLOMON: We're talking about billionaires,
9 Your Honor.

10 THE COURT: So --

11 MS. FLEMING: How about surrendering his children's
12 passports?

13 THE COURT: Well, I was going to say that part of
14 the package would be all of his children and his wife
15 surrender their passports, substantial cash put up front. I
16 don't want to poo poo this security firm, because I think
17 that's a good condition to put on the package.

18 But I'm concerned about the things we don't know
19 about and how to guard against those assets being -- those
20 resources being utilized.

21 MR. JAFFE: Your Honor, may I approach and address
22 that? I'm Joseph Jaffe from the company. We have some
23 previous examples, one from this court, one from the Southern
24 District, that might give you some guidance here.

25 THE COURT: All right. Why don't you come on up.

1 MR. JAFFE: Good afternoon, Your Honor. Joseph
2 Jaffe, Guidepost Solutions, LLC.

6 The first one we did with any prominence was the
7 chief judge of the State of New York when he was arrested in
8 New Jersey and then confined on Long Island and we've had a
9 series since then.

16 Mr. Webb posted more than \$10 million in bail.
17 There were various surrenders of property that affected the
18 real hurt if he were to leave, and he had another inducement
19 and that was his family and the protection of the family.

20 A man named Ng, who's from Macau, who was a
21 billionaire held in New York, in the Southern of New York,
22 Judge Broderick wrote an opinion imposing conditions. I can
23 hand that up to you, if Your Honor wishes.

24 In that case there were multimillions of dollars
25 posted. There was a PRB of about 50 million, with 20 million

1 in cash and assets posted.

2 He had slightly less connection to the community in
3 that this Mr. Ng has one small apartment in Manhattan. We
4 did the same security work there. We are present and still
5 on assignment there on a daily basis.

6 The issue in both of those cases, and I will point
7 out the one case in the Manhattan where this was rejected,
8 which was the Zarat (ph) case by Judge Berman, the difference
9 between Berman and all those other cases and this case is
10 real roots in this community.

11 There's a family that lives in a house that's
12 established. The citizens have been part of the United
13 States --

14 MR. PRAVDA: Your Honor, I apologize.

15 MR. JAFFE: -- for --

16 MR. PRAVDA: No, no, no. Excuse me. Excuse me.

17 THE COURT: He's going to object. He's going to
18 object to your argument.

19 MR. PRAVDA: If you want to hear this presentation
20 to understand the adequacy of the security firm, that's one
21 thing. And the government has no objection to that.

22 But for this individual to get up here and pitch
23 the court for the defendant's release on bond when first of
24 all, he's not an advocate for the party. Second of all, he
25 has a private commercial interest in seeing his firm obtain

1 this contract. That's inappropriate, Your Honor.

2 THE COURT: I agree. Tell me about --

3 MR. JAFFE: We have provided monitorship services
4 and home security confinement services since 1991 at various
5 iterations.

6 We have been appointed monitors by this court, by
7 the Southern District of New York, by the United States
8 Securities Exchange Commission, by all the prosecutors,
9 federal prosecutors in the State of New York. By all the
10 prosecutors and agencies in the City of New York.

11 No matter who pays for us, we report to the court.
12 We have allegiance only to the court. Whatever condition the
13 court sets, we live by that condition. In these situations
14 we usually report to Pretrial Services or to an agent or to
15 an assistant United States attorney.

16 We can on a daily basis provide logs of who's
17 there. We can on a daily basis provide information about
18 what's going on there. We are present inside and outside the
19 place where the home confinement exists.

20 There is monitoring going on electronically.
21 There's a bracelet that's worn which is provided by Pretrial
22 Services. There are two shifts, 12 hours each. If there's
23 any movement by anybody, there's an extra person in the car
24 added and a person at home to stand on to make sure it's
25 secure.

1 People are searched. They have, as they did in the
2 Ng case, there's a Title 3 put up on the phone center there.
3 There's a key monitor on the computers that are there.

4 There's all kinds of electronic capability to know what
5 the defendant is doing on the one hand, and who's there on
6 the other hand, to make sure that it's regulated, to restrict
7 the traffic as to who's there, and in each of those cases
8 there's the consent by the defendant to use whatever lawful
9 force is necessary to keep him from escaping.

10 We've done this for years in various iterations for
11 various judges. If you want us to refer you to them, we
12 will, and other agencies where we have the independence to
13 achieve whatever the court orders. Thank you for your time.

14 MR. FITZPATRICK: Has any of your people very
15 escaped?

16 MR. JAFFE: No, sir.

17 (Pause.)

18 MR. SOLOMON: Your Honor, I don't think that
19 changes the analysis. We're not necessarily impugning the
20 credibility of this firm.

21 What we're saying is there is so much that we don't
22 know at this point that can't get comfort that all of this
23 defendant's assets have been appropriately encumbered and
24 that appropriate measures will be taken so that he cannot
25 step into consular or diplomatic space.

1 MR. FITZPATRICK: Your Honor, I --

2 THE COURT: Real property in the name of Mr. Zhong,
3 or his children, or his wife. What real property is there
4 other than the house?

5 MR. FITZPATRICK: They have that house and his
6 daughter owns a home that Mr. Zhong paid for -- at least paid
7 a substantial portion of it.

8 Those are the only properties in the United States
9 that I'm aware of.

10 MR. FITZPATRICK: And again, Your Honor, his wealth
11 avails him nothing if he can't escape the custody of
12 Guidepost Solutions. It's his body, not his wealth --

13 THE COURT: Here's what we're going to do.

14 I'm willing to enter a \$10 million bond. How much
15 cash bond can you put up of that?

16 MR. FITZPATRICK: Your Honor, we have access --

17 THE COURT: How much does the family --

18 MR. FITZPATRICK: -- right now to a million
19 dollars.

20 MS. FLEMING: Your Honor, I'm sure that his
21 relatives from overseas would wire money in. I'm sure that
22 whatever the court would be comfortable with --

23 THE COURT: How about 5?

24 MS. FLEMING: I'm sure they would do it.

25 MR. SOLOMON: Your Honor, that just underscores --

1 THE COURT: I understand. I understand.

2 MR. SOLOMON: -- the issues that we outlined
3 before.

4 THE COURT: That's the dilemma that I pointed out
5 before. You know, it doesn't hurt --

6 MR. SOLOMON: Five million, 10 million, 20
7 millions. It doesn't mean anything.

8 THE COURT: It doesn't hurt, right? But --

9 MS. FLEMING: But the -- Your Honor asked --

10 THE COURT: Five million in cash, \$10 million bond
11 secured by the house in Jersey, and the daughter's house.

12 Every passport from the family, all the children, his wife,
13 himself. Pretrial Services supervision. Guidepost
14 monitoring. Home detention, electronic monitoring. Hold on.
15 Where is that letter?

16 (Pause.)

17 Travel restricted to New York City and the District
18 of New Jersey when he's not on -- not required to be in the
19 home.

20 Do we have the passport?

21 MR. FITZPATRICK: Yes, Your Honor. Pretrial has
22 it.

23 THE COURT: Now here's the kicker.

24 Before he will be released, we need proof of
25 divestment from U.S. Rilin and China Rilin, whether it's in -

1 - I don't really care about the form.

2 I want to make sure that he does not have access to
3 bank accounts at all, and he's not involved in the business.

4 You don't want him involved in U.S. Rilin, right?

5 MS. FLEMING: I don't want him involved in U.S.
6 Rilin and we will take care of that. China Rilin is a little
7 more difficult because I don't think he has signatory
8 authority on it now, but we will make sure whatever we do --

9 THE COURT: You're telling me he wrote checks --

10 MS. FLEMING: He did. He did in the past. He
11 worked for China Rilin the past. I'm talking about now, but
12 we will check it out.

13 MR. SOLOMON: That's -- no, Your Honor. That's
14 directly at odds with what was represented in court Saturday.
15 There were representations made that this defendant had no
16 connections with China Rilin and how that tune has changed.

17 MS. FLEMING: In the past. In the past he worked
18 for them.

19 MR. PRAVDA: There was -- the representation was
20 made that he never had anything --

21 THE COURT: I'll leave it to you folks to work out
22 what that proof is, but I want to -- well, I'm not on -- I'm
23 on tomorrow morning. I don't know if you can get it done by
24 then.

25 MS. FLEMING: I'm going to need him physically

1 somewhere in front of a notary, which I can't do at MDC.

2 So I'm going to have the paperwork and perhaps when
3 he's produced will you guys come and he can sign the trust
4 and stuff in front of a notary and then we can give it to the
5 court?

6 I can't -- I have to get it in front of a notary
7 that he's divesting and signing trust agreements, et cetera.

8 MR. SOLOMON: Respectfully, Your Honor, if it's
9 more efficient, I think it is the government's intent to
10 appeal any ruling that this defendant is bailable.

11 So maybe we should do that first, rather than going
12 through all the trouble of executing the paperwork.

13 THE COURT: This is only on a complaint, right?

14 MR. SOLOMON: Right.

15 THE COURT: It's not indicted yet. So you appeal
16 to the miscellaneous --

17 MR. SOLOMON: Miscellaneous district judge.

18 THE COURT: Do we know who's on miscellaneous duty?

19 MR. SOLOMON: It's Judge Chen, Your Honor.

20 THE COURT: All right. Well, can we have a bond
21 that she could look at? Something else?

22 UNIDENTIFIED: (Indiscernible)

23 THE COURT: Oh, firearm. Oh, yes. Definitely
24 surrender a firearm.

25 (Pause.)

1 THE COURT: All right. 10 million and I said five
2 million in cash. Oh, you got that. Sorry.

3 MR. SOLOMON: Addresses on both properties.

4 THE COURT: Okay. We'll get the addresses on both
5 properties. Proof of divestment from U.S. -- it's R-I-L-I-N?

6 MR. FITZPATRICK: Yes, Your Honor.

7 THE COURT: And China R-I-L-I-N. All right.

8 And what about sureties? We want his wife?

9 MR. SOLOMON: Yes, Your Honor. And to the extent
10 they are going to be sureties, we would want an opportunity
11 to interview them.

12 THE COURT: Uh-hm. His daughter is in -- she's in
13 school. She's the one with the apartment?

14 MR. FITZPATRICK: Sorry, Your Honor?

15 THE COURT: The adult daughter is the one with the
16 house?

17 MR. FITZPATRICK: Yes, Your Honor.

18 THE COURT: But she's in school too?

19 MR. FITZPATRICK: Yes.

20 THE COURT: All right.

21 MR. FITZPATRICK: While she's in dental school I
22 believe she also has an apartment in New York City. But the
23 home I believe is in Uniondale, Long Island.

24 THE COURT: She rents her apartment in New York
25 City?

1 MR. FITZPATRICK: I believe so, Your Honor.

2 THE COURT: All right. So it's the wife and the
3 daughter, and the adult son, even though he's a student. How
4 about avoiding contact with certain people? Who would that
5 be?

6 MR. PRAVDA: Your Honor, I think that he would not
7 have contact with anyone from the mission or the consulate or
8 U.S. or China Rilin?

9 THE COURT: Or what?

10 MR. PRAVDA: U.S. and China Rilin, as well.

11 MS. FLEMING: Your Honor, how could he not have
12 contact with anyone connected with U.S. Rilin -- I'm counsel
13 for them.

14 MR. PRAVDA: I'm talking about employees, Your
15 Honor. Not counsel.

16 MS. FLEMING: Well, or I mean -- all right. There
17 may business decisions he has to be consulted on. He's not
18 going to have any access to money, but he is going to have to
19 be consulted --

20 MR. SOLOMON: I thought Ms. Fleming just
21 represented that this defendant will not have any future
22 place at U.S. or China Rilin. And then she's just indicating
23 that he will be making decisions?

24 MS. FLEMING: I thought what I said was he would
25 have no access to any money. We might be consulting him on

1 business or transition, et cetera.

2 How about if there's any business it will be
3 conducted in the presence of counsel? If there's anything
4 that needs to be discussed, it will be with counsel present.

5 (Pause.)

6 THE COURT: All right. There you go.

7 You're going to go see her today?

8 MR. SOLOMON: We're going to attempt to, Your
9 Honor. She's been made aware of this application.

10 THE COURT: You gave her a warning?

11 MR. SOLOMON: We gave her a warning that there was
12 the possibility the defendant would be bailed out.

13 THE COURT: All right. Oh, yes. Okay. Anything
14 else?

15 MR. SOLOMON: Yes, Your Honor. A couple of other
16 things.

17 First of all, there's the matter of a preliminary
18 hearing.

19 THE COURT: Do you want a preliminary hearing?

20 MR. FITZPATRICK: I'd love one Your Honor, but
21 they're going to indict him before we get to it, so can I
22 just explain to my client what he may be waiving at the
23 moment?

24 THE COURT: Yes.

25 MR. FITZPATRICK: Thank you. May we step aside for

1 a moment?

2 THE COURT: Sure.

3 MS. FLEMING: Your Honor, I'll step back. Thank
4 you.

5 (Pause.)

6 THE COURT: Oh, did we have Guidepost monitoring on
7 that?

8 MR. PRAVDA: I have a copy of it, Your Honor. No
9 I don't --

10 MR. SOLOMON: And also it doesn't indicate that
11 he's not allowed to go to the PRC Mission or the PRC
12 Consulate.

13 THE COURT: Defendant must avoid all contact with
14 the following persons or entities.

15 MR. SOLOMON: And then no. 3, the defendant must
16 avoid and not go to the any of the following locations.

17 THE COURT: Oh.

18 (Pause.)

19 THE CLERK: All right. We're still on the record.

20 MR. FITZPATRICK: Your Honor, on the advice of
21 counsel, Mr. Zhong waives a preliminary hearing.

22 THE COURT: Okay. All right. Anything else?

23 MR. PRAVDA: Your Honor, just a couple of things.

24 One on the release order, I assume that we can
25 represent to Judge Chen that the defendant would not actually

1 be released until all of these conditions are satisfied, like
2 the posting of the house, the daughter's house, and removing
3 him as the signatory on various bank accounts.

4 THE COURT: Yes.

5 MR. PRAVDA: Okay. And the second thing is, Your
6 Honor, the government detained an individual on a material
7 witness warrant last night, or perhaps more accurately, early
8 this morning, who is a witness against the defendant.

9 The government had discussed this with Mr.
10 Fitzpatrick. We're requesting that the court order a 415
11 deposition to take place today.

21 And I know Mr. Fitzpatrick had concerns about that
22 he wanted to raise to the court.

23 MR. FITZPATRICK: Your Honor, I have great sympathy
24 for people being held in custody, but I don't know who this
25 gentleman is. They have told me the questions they want to

1 ask. Indeed they've accommodated me to the point of
2 suggesting some questions on cross examination. I'm very
3 appreciative.

4 But I don't know exactly how relevant this
5 gentleman's testimony is and what affect it would have on my
6 client at trial.

7 I cannot consent to participate in a Rule 15
8 deposition today.

9 MS. PIERCE: Your Honor, if I may, Marjorie Pierce.

10 THE COURT: Come on up.

11 MS. PIERCE: I apologize for my attire. I was in
12 my office kind of casual.

13 I have been asked to represent the witness,
14 Marjorie Pierce of Ballard Spahr. So I'm introducing myself
15 to you.

16 And so if I can have an opportunity to consult with
17 my client when he arrives here. I understand he's en route,
18 and then we can discuss the scheduling of the deposition.

19 MS. FLEMING: Let me just give you background, Your
20 Honor.

21 On behalf of the company, I told you there's a lot
22 of litigation going on with other grand jury subpoenas. There
23 were other people who left and went to China.

24 The company's position has consistently been --
25 this is China Rilin. This is not U.S. Rilin.

1 But the company's position has consistently been
2 when a court issues an order, the company complies with court
3 orders. Period. And we have taken what we believe to be
4 appropriate steps in doing that.

5 We also believe it was appropriate to make
6 available to anyone who wanted to speak with independent
7 counsel, as opposed to company counsel with our advice, what
8 their rights were, somebody who looked only for their
9 individual interest, completely free of being tainted or
10 feeling that there's any pressure from the company if they
11 tell us about -- although I am a sweetheart, no one would
12 ever of accuse me of asserting any undue influence.

13 So Marjorie Pierce has been available to other witnesses.

14 We don't have a dog in this fight except to advise
15 the court there is ongoing litigation. It has been the
16 position of China and we have on behalf of the people, even
17 on behalf of those people, those we accept it without waiving
18 anything and asserting on their behalf their immunity.

19 And this is one of the people I understand who's
20 been advised by the department -- the State Department that
21 his time will run out tomorrow.

22 So I don't know if he's one of the people that had
23 a subpoena accepted or not, with a physical delivery, but if
24 it is, it's somebody where immunity was asserted. Just so
25 you know, it is independent counsel. The company doesn't

1 take a position, other than making that available and making
2 the court aware of the position of China and the other people
3 with regard to this and this ongoing dispute with the State
4 Department and China.

5 THE COURT: So Ms. Pierce, you wanted to talk with
6 your client.

7 MS. PIERCE: If I may, Your Honor.

8 THE COURT: Is he on his way to the courthouse?

9 MR. PRAVDA: Your Honor, he is currently at our
10 offices.

11 If I may, Your Honor, if the court wishes to
12 appoint independent counsel, we would recommend CJA counsel
13 be appointed for the defendant. Obviously, nothing against
14 Ms. -- I apologize.

15 MS. PIERCE: Marjorie Pierce.

16 MR. PRAVDA: But quite clearly, she was brought on
17 by company counsel. The company's interest is significantly
18 different from the interest of the individual workers.

19 So our recommendation would be that CJA counsel be
20 appointed to represent the witness so that he has truly
21 independent counsel.

22 MS. PIERCE: Your Honor, I actually take some
23 great umbrage at that. I am independent counsel for this
24 individual, as well as other employees. I have been involved
25 in this matter. I think counsel was informed of my

1 involvement months ago.

2 I met with several of the employees and I am
3 independent counsel. I am not representing China Rilin. I do
4 not represent U.S. Rilin. I don't represent the entities. I
5 represent the individuals and I would like an opportunity to
6 consult with this individual.

7 If he decides he doesn't want me to represent him,
8 then the court can appoint CJA counsel. But I think it's his
9 entitlement to consult with me and then a decision to be
10 made.

11 And I do take some umbrage at it being suggested I
12 would not honor my obligations as an attorney.

13 MR. PRAVDA: Your Honor, searches were executed
14 approximately a week ago upon two locations in New Jersey
15 where China Rilin was housing some of these workers who have
16 now departed from the country, despite having been served
17 with grand jury subpoenas.

18 Approximately, 20 workers were interviewed by law
19 enforcement agents and nearly all of them presented agents
20 with Ms. Fleming's business card, Ms. Fleming and counsel for
21 China Rilin and identified her as their lawyer.

22 MS. PIERCE: The six individuals that I have
23 represented, Your Honor, are in China. So I have not met with
24 anybody. Nobody has my card. They're people that are here
25 in the states.

1 THE COURT: All right. I'll give Ms. Pierce the
2 opportunity to meet with the witness.

3 If he decides he wants someone else, he'll let us
4 know and we will appoint CJA counsel.

5 So you want to talk to him to find out whether to
6 go forward with the deposition?

7 MS. PIERCE: I'd like to talk to him first to
8 introduce myself and to find out if he does want me to
9 represent him. And assuming that he does want me to
10 represent him, then I will talk with him about the Rule 15
11 deposition.

12 I understand Mr. Fitzpatrick's position about the
13 timing of it. I do undersatnd also that his status expires
14 tomorrow. And so I do want an opportunity to talk with him.
15 I would need the interpreter to assist me with that.

16 MR. SOLOMON: Your Honor, in the interest of full
17 disclosure, we had already reached out to CJA counsel for
18 tomorrow, Ms. Ellen Nelson. She is at our office presently
19 attending to this individual.

20 THE COURT: Now?

21 MR. SOLOMON: Yes.

22 MS. PIERCE: Before being appointed.

23 THE COURT: Why don't you get on over there and
24 talk to him? Can you do the deposition tomorrow?

25 MR. SOLOMON: Your Honor --

1 THE COURT: -- to give Mr. Fitzpatrick a little
2 more time?

3 MR. SOLOMON: We could do it tomorrow. There's
4 been a lot of international pressure to allow this witness to
5 return to China as quickly as possible. We're available
6 tomorrow. But I understand the witness really desires to
7 return to China today. And we also understand speaking to Mr.
8 Fitzpatrick that he's available.

9 Our questions as to this witness are quite simple.
10 We have a debt bondage contract with this witness' name on
11 it.

12 Our questions will simply be is -- there are
13 fingerprints on this contract. Are those fingerprints yours?
14 Is this your contract? Do you work for Rilin? And who
15 pledged the collateral to assure your return to China upon
16 your completion of your work? That's basically it.

17 We provided those questions to Mr. Fitzpatrick. I
18 don't think there's a lot of preparation required to defend
19 that deposition or to cross examine that witness.

20 THE COURT: It's not heavy lifting.

21 MR. FITZPATRICK: Your Honor, they know a lot more
22 about this case than I do, and he's going to be back in China
23 when they offer that Rule 15 deposition at trial.

24 I'm not going to participate in something like that
25 until I know exactly what that witness represents. I don't

1 even know how the testimony would be admissible. I haven't
2 even figured that out yet.

3 THE COURT: If it's not admissible, it's not
4 admissible and it's just wasting their time.

5 MR. SOLOMON: It's not admissible. He can still
6 make those arguments to the district judge.

7 THE COURT: All right. The deposition will go
8 forward.

9 MS. PIERCE: When, Your Honor?

10 THE COURT: Today.

11 MR. SOLOMON: Thank you, Your Honor.

12 THE COURT: If it's as simple as that. If you're -

13 -

14 MR. SOLOMON: It is as simple as that.

15 THE COURT: If you're getting --

16 MR. FITZPATRICK: Your Honor, they say --

17 THE COURT: -- into 7 o'clock at night, you know,
18 I'll adjourn it until the next day.

19 MR. FITZPATRICK: Your Honor, they say it's that
20 simple. How do I know how that's going to impact Mr. Zhong
21 at trial when this guy's back in China?

22 THE COURT: I think you can figure it out.

23 MR. SOLOMON: Then the company can bring him back.

24 MS. FLEMING: He might not have status to come
25 back.

1 THE COURT: Yes. All right. Anything else?

2 MR. SOLOMON: No. Thank you, Your Honor.

3 MS. FLEMING: Thank you, Your Honor.

4 THE COURT: Thanks.

5 MR. FITZPATRICK: Thank you.

6 (Proceedings concluded at 1:58 p.m.)

7

8 I, CHRISTINE FIORE, court-approved transcriber and
9 certified electronic reporter and transcriber, certify that
10 the foregoing is a correct transcript from the official
11 electronic sound recording of the proceedings in the above-
12 entitled matter.

13

14

Christine Fiore

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November 18, 2016

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Christine Fiore, CERT

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